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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/083,178	02/25/2002	Randy Walburger	01-10416	5149
25189	7590	04/01/2004	EXAMINER	
CISLO & THOMAS, LLP 233 WILSHIRE BLVD SUITE 900 SANTA MONICA, CA 90401-1211			NGUYEN, CHI Q	
			ART UNIT	PAPER NUMBER
			3635	

DATE MAILED: 04/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/083,178

Applicant(s)

WALBURGER, RANDY

Examiner

Chi Q Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 January 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 and 21-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16, and 21-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 February 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This Office action is in response to the applicant's amendment filed on 1/22/04.

Claim Objections

The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claims 22-24 been renumbered 21-23.

Since there is no such claim 17 originally filed. Therefore, the applicant's cancelled claims actually start from claim claims 17-20 (not claims 18-21). And the newly submitted claims filed on 1/22/04 start from claim 21-23.

Claims 1-3, 5, 8-10, and 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heifetz '528 in view of Nielsen '376.

In regard to claims 1, 10, and 21-23, Heifetz teaches modular shelter comprising an elongated horizontally oriented generally box structure 10 having interior sidewalls 20, 22, defining a first interior volume, and exterior sidewalls 24, 26 extending to an opposing end defining a second interior volume, a substantially flat bottom surface 88. The first and second interior volumes are separated by an end wall 38 and the box structure 10 configured for securing together a plurality of similar modular structures

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(figs. 2 and 4). Heifetz does not teach expressly the box like shelter having interior sidewalls defining a generally cylindrically shaped first interior volume. Nielsen teaches temporary shelter having stackable shelters 10 including interior sidewalls defining a generally cylindrically shape 14 (figs. 1-2). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine Heifetz with Nielsen for the cylindrical shaped interior shelter. The motivation for doing so would have been to minimize dead spaces so that more shelters could be stacked to house more occupants. In regard to claims 2-3, Heifetz teaches additional modular units are stackable one atop another (fig. 4). In regard to claim 5, Heifetz teaches the box like structure having a closet or dressing room 96 (fig. 4) In regard to claims 8-9, Heifetz teaches the structure is fabricated of molded plastic, weather tight (col. 5, lines 10-51).

Claims 6, 7, 11, 12, 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heifetz '528 in view of Nielsen '376 and further in view of Shane '646.

With regard to claims 6, 7, 11, 12, 16, Heifetz and Nielsen teach the structural elements for the shelter except for the shower unit secured to a dressing room unit and a passageway there between, shelter comprising a sink attachable to the exterior of the dressing room unit, a first door closing off the first interior volume and a second door closing off the second interior volume, locking means. Shane teaches a shelter comprising an elongated horizontally oriented generally box like structure 10 having bathroom unit 34, a passageway 14, a sink 42, a first door 21, a second door 21', locking means L (see attached fig. 2). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine Heifetz and Nielsen with

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Shane for the structure having bathroom unit, a passageway, a sink, a first, second, doors and locking means. The motivation for doing so would have been to provide more convenience for occupant.

Claims 4 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heifetz '528 in view of Nielsen '376 and further in view of Jazzar '805.

With regard to claim 14, Heifetz and Nielsen teach the structural elements for the box like shelter as stated including sidewalls are fabricated from plastic and foamed material filled in between. The foam material is high compressive strength and good fire resistance or retardation characteristics (col. 6, lines 13-14). Heifetz and Nielsen do not specifically teach the foamed sidewall having sound dampening. The examiner considers the foamed material is inherently having sound dampening characteristic at some levels.

With regard to claim 4, Heifetz and Nielsen teach the structural elements for the box like shelter except for a plurality of legs protruding from a bottom of the box structure and a plurality of corresponding cavities on a top. Jazzar teaches stackable module units including a plurality of legs 54 from a bottom of the structure 10 and a plurality of corresponding cavities 49 on a top 51 (figs. 7-10). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine Heifetz, Nielsen with Jazzar for the plurality of legs and cavities. The motivation for doing so would have been to provide engagement between two stackable shelters.

Claims 13 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heifetz '528 in view of Nielsen '376 and further in view of Sanford '522.

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Heifetz and Nielsen teach the structural elements for the box shelter as stated except for raised bossed at corners and edges of the box structure and ventilating means. Sanford teaches box like shelter unit including raised bosses 103 at all corners and edges, and ventilating means 50 (fig. 1). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine Heifetz, Nielsen with Sanford for the raised bossed at corner and edges and ventilating means. The motivation for doing so would have been to allow mechanically lifting and air ventilation through the shelter.

Response to Arguments

Applicant's arguments filed 1/22/04 have been fully considered but they are not persuasive because the examiner does not agree. As set forth in the Office action that Heifetz clearly shows in fig. 2, there are two interior sections separating by the interior wall 38 and the extending walls. Thus one section could be used for human occupation; the other section could be used for storage of the occupant's belonging, etc.

With regard to the applicant's argument that the Jazzar is non-analogous art in combination with Heifetz and Nielsen. It has held that the determination that a reference is from a non-analogous art is twofold. First, we decide if the reference is within the field of the inventor's endeavor. If it is not, we proceed to determine whether the reference is reasonable pertinent to the particular problem with which the inventor was involved. *In re Wood*, 202 USPQ 171, 174. In this case, Jazzar teaching within the field of building construction even though the building material is not similar (concrete), examiner

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considers stackable modular building with connecting projection is well known in the modular building art.

With regard to the applicant's argument that the Sanford reference does not show ventilating means nor raised bosses at the corner and edges. The examiner does not agree because Sanford clearly shows a ventilating means 50 and raised bosses 103 at corners and edges as shown in fig. 1. Therefore, examiner considers the prior art met the applicant's claimed invention and the Office action is clearly and properly made.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communication from the examiner should be directed to Chi Q. Nguyen whose telephone number is (703) 605-1224, Mon-Thu (7:00-5:30), Fridays off or examiner's supervisor, Carl Friedman can be

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reached at (703) 308-0839. The fax number for the organization where this application or proceeding assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-

1113.

CN
CQN
3/24/04



Carl D. Friedman
Supervisory Patent Examiner
Group 3600